



BellSouth Telecommunications, Inc. 615 214-6301  
Suite 2101 Fax 615 214-7406  
333 Commerce Street  
Nashville, Tennessee 37201-3300

REC'D TN  
REGULATORY UNIT  
Guy M. Hicks  
General Counsel  
SEP 8 PM 9 52

September 7, 1999

EXECUTIVE SECRETARY

**VIA HAND DELIVERY**

Mr. Gary Hotvedt, Hearing Officer  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

Re: Petition by ICG TELECOM GROUP, INC. for Arbitration of an Interconnection Agreement with BELLSOUTH TELECOMMUNICATIONS, INC. pursuant to Section 252(b) of the Telecommunications Act of 1996  
Docket No. 99-00377

Dear Mr. Hotvedt:

Enclosed is a proposed Protective Order in the above-referenced arbitration proceeding. If this proposed Protective Order meets with your approval, I would appreciate your entering it and sending copies to the parties.

Very truly yours,

Guy M. Hicks

GMH/jem

Enclosure

cc: Henry Walker, Esquire (w/enclosure)

**FILE**

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *Petition by ICG TELECOM GROUP, INC. for Arbitration of an Interconnection Agreement with BELLSOUTH TELECOMMUNICATIONS, INC. pursuant to Section 252(b) of the Telecommunications Act of 1996*

Docket No. 99-00377

**PROTECTIVE ORDER**

To expedite the flow of filings, exhibits and other materials, and to facilitate the prompt resolution of disputes regarding the confidentiality of the material, adequately protect material entitled to be kept confidential and to ensure that protection is afforded only to material so entitled, the Tennessee Regulatory Authority ("TRA") hereby orders that:

1. For the purpose of this Protective Order (the "Order"), proprietary or confidential information, hereinafter referred to as "CONFIDENTIAL INFORMATION" shall mean documents and information in whatever form which the producing party, in good faith, deems to contain or constitute trade secrets, confidential research, development or other sensitive information, and which has been specifically designated by the producing party. A producing party is defined as the party creating the confidential information as well as the party having actual physical possession of information produced pursuant to this Order. All summaries, notes, extracts, compilations or other direct or indirect reproduction from or of any protected materials, shall be entitled to protection under this Order. Documents containing CONFIDENTIAL INFORMATION shall be specifically marked as confidential on the cover with the accompanying page numbers listed either on the cover or on a subject index page. Each document containing CONFIDENTIAL INFORMATION must be highlighted under or through the passages of information to clearly identify the

CONFIDENTIAL INFORMATION without defacing the information or rendering it undecipherable. The document must be accompanied by proof of confidentiality, that is, an affidavit showing the cause of protection under this Order. The Affidavit may be reviewed by the Pre-Hearing Officer, Administrative Law Judge or the Authority for compliance with this paragraph. Any document so designated shall be handled in accordance with this Order. The provisions of any document containing CONFIDENTIAL INFORMATION may be challenged under Section 10 of this Order.

2. Any party or company subject to this Order, including producing parties or persons reviewing CONFIDENTIAL INFORMATION, shall act in good faith in discharging their obligations hereunder. Parties or nonparties subject to this Order shall include parties which are allowed by the TRA to intervene subsequent to the date of entry of this Protective Order.

3. CONFIDENTIAL INFORMATION shall be disclosed only to the following persons:

- (a) counsel of record for the parties in this case and associates, secretaries, and paralegals actively engaged in assisting counsel of record in this and the designated related proceedings;
- (b) in-house counsel for the parties;
- (c) officers, directors, or employees of the parties, who are directly and specifically consulted or involved in this docket; provided, however, that CONFIDENTIAL INFORMATION shall be shown only to those persons having a need to know;
- (d) TRA Directors and members of the staff of the TRA;
- (e) outside consultants and expert witnesses employed or retained by the parties or their counsel, who have access to CONFIDENTIAL INFORMATION solely for evaluation, testing, testimony, preparation for trial or other services related to this docket, provided that to the extent that any party seeks to disclose CONFIDENTIAL INFORMATION to any outside consultant or expert witness who is expected to testify on that party's behalf, the party shall give five (5) days' written notice to the producing party of intention to disclose CONFIDENTIAL INFORMATION. During such notice period, the producing party may move to prevent or limit

disclosure for cause, in which case no disclosure shall be made until the Tennessee Regulatory Authority, the Pre-Hearing Officer, the Administrative Law Judge or court rules on the motion. Any such motion shall be filed within three (3) days after service of the notice. Any response shall be served within three (3) days after service of the motion. Pre-Hearing conferences may be called to confer with the parties on the Motions to Limit Disclosure. All service shall be by hand delivery or by facsimile.

Under no circumstances shall any CONFIDENTIAL INFORMATION be disclosed to or discussed with anyone associated with the marketing of products, goods or services in competition with the products, goods or services of the producing party.

4. Prior to disclosure of CONFIDENTIAL INFORMATION to any TRA Director, member of the TRA staff, employee, officer or director of the parties, the counsel representing the party who is to receive the CONFIDENTIAL INFORMATION shall provide a copy of this Order to the recipient Director, staff member, employee, officer, or director, who shall be bound by the terms of this Order. Prior to disclosure of CONFIDENTIAL INFORMATION to any outside consultant or expert witness employed or retained by a party, counsel shall provide a copy of this Order to the outside consultant or expert witness, who shall sign an affidavit in the form of that attached to this Order attesting that he or she has read a copy of this Order, that he or she understands and agrees to be bound by the terms of this Order, and that he or she understands that unauthorized disclosure of the documents stamped CONFIDENTIAL constitutes a violation of this Order. This affidavit shall be signed in the presence of and be notarized by a notary public. Counsel of record for each party shall provide the producing party a copy of each such Affidavit and shall keep the Affidavits executed by the parties' experts or consultants on file at their respective offices.

5. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing

such documents, this failure shall not constitute a waiver of confidentiality; provided the party or non-party who has produced the document shall notify the recipient of the document in writing within five (5) days of discovery of such inadvertent failure to designate the document as CONFIDENTIAL. At that time, the recipients will immediately treat the subject document as CONFIDENTIAL. In no event shall the TRA be liable for any claims or damages resulting from the disclosure of a document while not so designated as CONFIDENTIAL. An inadvertent failure to designate a document as CONFIDENTIAL shall not, in any way, affect the TRA's determination as to whether the document is entitled to CONFIDENTIAL status.

6. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing such documents and such failure is not discovered in time to provide a five (5) day notification to the recipient of the confidential nature of the documents referenced in the paragraph above, the failure shall not constitute a waiver of confidentiality and a party by written motion or by oral motion at a Pre-Hearing Conference called for the purpose or at the Hearing on the merits may request designation of the documents as CONFIDENTIAL, and if the motion is granted by the Pre-Hearing Officer, Administrative Law Judge, or the Authority, the recipients shall immediately treat the subject documents as CONFIDENTIAL. The Tennessee Regulatory Authority, the Pre-Hearing Officer or Administrative Law Judge may also, at his or her discretion, either before or during the Pre-Hearing Conference or hearing on the merits of the case, allow information to be designated CONFIDENTIAL and treated as such in accordance with the terms of this Order.

7. Any papers filed in this proceeding that contain, quote, paraphrase, compile or otherwise disclose documents covered by the terms of this Order, or any information contained therein, shall be filed and maintained with the Executive Secretary of the TRA in sealed envelopes

marked CONFIDENTIAL and labeled to reflect the style of this proceeding, the docket number, the contents of the envelope sufficient to identify its subject matter, and this Protective Order. The envelopes shall be maintained in a locked filing cabinet. The envelopes shall not be opened or their contents reviewed by anyone except upon order of the TRA, Pre-Hearing Officer, or Administrative Law Judge after due notice to counsel of record. Notwithstanding the foregoing, the Directors and the Staff of the TRA may review any paper filed as CONFIDENTIAL without obtaining an order of the TRA, Pre-Hearing Officer or Administrative Law Judge, provided the Directors and Staff maintain the confidentiality of the paper in accordance with the terms of this Order.

8. Documents, information and testimony designated as CONFIDENTIAL, in accordance with this Order, may be disclosed in testimony at the hearing of this proceeding and offered into evidence used in any hearing related to this action, subject to the Tennessee Rules of Evidence and to such future orders as the TRA, the Pre-Hearing Officer, or the Administrative Law Judge may enter. Any party intending to use documents, information, or testimony designated CONFIDENTIAL shall inform the producing party and the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, prior to the hearing on the merits of the case in the manner designated previously in this Order, of the proposed use; and shall advise the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, and the producing party before use of such information during witness examinations so that appropriate measures can be taken by the TRA, the Pre-Hearing Officer, or the Administrative Law Judge in order to protect the confidential nature of the information.

9. Except for documents filed with the Executive Secretary of the TRA, all documents covered by the terms of this Order that are disclosed to the requesting party shall be maintained

separately in files marked CONFIDENTIAL and labeled with reference to this Order at the offices of the requesting party's counsel of record.

10. Nothing herein shall be construed as preventing any party from continuing to use and disclose any information (a) that is in the public domain, or (b) that subsequently becomes part of the public domain through no act of such party, or (c) that is disclosed to it by a third party, where said disclosure does not itself violate any contractual or legal obligation, or (d) that is independently developed by a party, or (e) that is known or used by it prior to this proceeding. The burden of establishing the existence of (a) through (e) shall be upon the party attempting to use or disclose such information.

11. Any party may contest the designation of any document or information as CONFIDENTIAL by filing a Motion with the TRA, Pre-Hearing Officer, Administrative Law Judge or the courts, as appropriate, for a ruling that the documents information, or testimony should not be so treated. All documents, information and testimony designated as CONFIDENTIAL, however, shall be maintained as such until the TRA, the Pre-Hearing Officer, the Administrative Law Judge, or a court orders otherwise. A Motion to contest must be filed not later than fifteen (15) days prior to the Hearing on the Merits. Any Reply from the Company seeking to protect the status of their CONFIDENTIAL INFORMATION must be received not later than ten (10) days prior to the Hearing on the Merits. Motions made and subsequent Replies received with the ten (10) days prior to the hearing on the Merits shall be presented to the Authority at the Hearing on the merits for a ruling.

12. Nothing in this Order shall prevent any party from asserting any objection to discovery other than an objection based upon grounds of confidentiality. Nothing in this Order is intended to limit or expand the statutory authority of the Attorney General or the Consumer

Advocate Division as expressed in *T.C.A. § 10-7-504(a)* titled *Confidential Records*, and *T.C.A. § 65-4-118* titled *Consumer Advocate Division*.

13. Non-party witnesses shall be entitled to invoke the provisions of this Order by designating information disclosed or documents produced for use in this action as CONFIDENTIAL and by filing an appropriate motion with the TRA, in which event the provisions of this Order shall govern the disclosure of information or documents provided by the non-party witness.

14. No person authorized under the terms herein to receive access to documents, information, or testimony designated as CONFIDENTIAL shall be granted access until such person has complied with the requirements set forth in paragraph 4 of this Order.

15. Any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

16. Upon an order becoming final in this proceeding or any appeals resulting from such an order, all the filings, exhibits and other materials and information designated CONFIDENTIAL and all copies thereof shall be returned to counsel for the party who produced (or originally created) the filings, exhibits and other materials, within fifteen (15) days or counsel in possession of the filings, exhibits and other materials, shall certify to counsel for the producing party that all the filings, exhibits and other materials, plus all copies or extracts from the filings, exhibits and other materials and all copies of the extracts from the filings, exhibits and other materials thereof have been destroyed.

17. After termination of this proceeding, the provisions of this Order relating to the secrecy and confidential nature of CONFIDENTIAL DOCUMENTS, information and testimony



shall continue to be binding upon parties herein and their officers, employers, employees, agents, and/or others for five years unless this Order is vacated or modified.

18. Nothing herein shall prevent entry of a subsequent order, upon an appropriate showing, requiring that any documents, information or testimony designated as CONFIDENTIAL shall receive protection other than that provided herein.

19. The parties to this proceeding have agreed to execute a Protective Agreement, copy attached, concerning proprietary matters in this Docket. The provisions of that Agreement are incorporated herein as if fully restated. In the event that any of the provisions of that Protective Agreement conflict with this Protective Order the provisions of this Order shall control.

20. That any party aggrieved with the Authority's decision in this matter may file a petition for Reconsideration with the Authority within (10) days from and after the date of this Order.

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

**CERTIFICATE OF AUTHORIZED REVIEWING REPRESENTATIVE**

BEFORE ME , the undersigned authority, duly Commissioned and qualified in and for the State and County aforesaid, personally came and appeared \_\_\_\_\_ (insert name), who, being by me first duly sworn, deposed and said as follows:

I certify my understanding that Confidential Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Agreement in Tennessee Regulatory Authority Docket No. 99-00377, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of " Confidential Information", and any notes, memoranda, or any other form of information regarding or derived from Confidential Information shall not be disclosed to anyone other than in accordance with the Protective Agreement and shall be used only for the purposes of the proceedings in Docket No. 99-00377.

Signature:

\_\_\_\_\_

Date of Execution: \_\_\_\_\_  
(Type or Print below)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Requesting Party: \_\_\_\_\_


SWORN TO AND SUBSCRIBED BEFORE ME on this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
(NOTARY PUBLIC)

My Commission expires:

\_\_\_\_\_

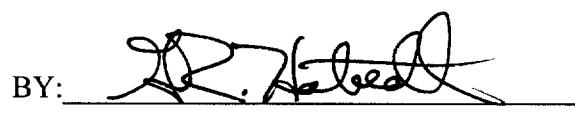
BELLSOUTH TELECOMMUNICATIONS,  
INC.

BY:   
\_\_\_\_\_

ICG TELECOM GROUP, INC.

BY: \_\_\_\_\_

TENNESSEE REGULATORY AUTHORITY


BY:   
\_\_\_\_\_

as - PRE-ARBITRATION OFFICER

BELL SOUTH TELECOMMUNICATIONS,  
INC.

BY: \_\_\_\_\_

ICG TELECOM GROUP, INC.

BY:  \_\_\_\_\_

TENNESSEE REGULATORY AUTHORITY

BY: \_\_\_\_\_

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re:            *Petition by ICG TELECOM GROUP, INC. for Arbitration of an Interconnection Agreement with BELLSOUTH TELECOMMUNICATIONS, INC. pursuant to Section 252(b) of the Telecommunications Act of 1996*

Docket No. 99-00377

**PROTECTIVE AGREEMENT**

STIPULATION AND AGREEMENT

To expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect material entitled to be kept confidential, and ensure that the protection is afforded to material so entitled, the undersigned parties, through their respective attorneys, hereby stipulate and agree as follows:

1.     *Exchange of Confidential Information.* The parties will be bound by the terms of this Protective Agreement upon executing it. Parties may exchange Confidential Information pursuant to discovery upon executing this Protective Agreement. Any party, including Third Parties (as defined in paragraph 2), shall be entitled to seek enforcement of (or other appropriate relief pertaining to) this Protective Agreement before the Tennessee Regulatory Authority ("TRA"), a member of the TRA, or any other authority having competent jurisdiction, for any breach or threatened breach of this Protective Agreement. This Protective Agreement shall control the production and disclosure of all materials deemed confidential pursuant to paragraphs 2 and 3 below, including both materials and information belonging to the parties of this Protective Agreement as well as Confidential Information belonging to Third Parties as defined more fully in paragraph 2 below.

2.     *Confidential Information from Third Parties.* For the purposes of this Protective Agreement, "Third Party Confidential Information" shall mean information held by any party subject to existing, nondisclosure obligations to a third party ("Third Party"), such as Bell Communications Research, Inc. ("Bellcore"). Any Third Party Confidential Information that is produced pursuant to the conduct of discovery in this Proceeding may be produced as "Confidential Information" pursuant to paragraph 3 below. A Third Party under this Protective Agreement shall include, but is not limited to, the following companies:

- |                                       |                                       |
|---------------------------------------|---------------------------------------|
| • ADC Telecommunications Inc.         | • Mercury Interactive Corporation     |
| • Alcatel Network Systems Corporation | • NCR Corporation                     |
| • Amdahl Corporation                  | • Netscape Communications Corporation |

- Apertus Technologies, Incorporated
- Apple Computer Systems
- Bell Communications Research, Inc.
- BGS Systems, Inc.
- Control Data Systems, Inc.
- Digital Equipment Corporation
- DSC Communications Corporation
- Ericsson Inc.
- Fujitsu Network Communications, Inc.
- Hewlett Packard Company
- Homaco, Inc.
- International Business Machines Corporation
- Informix Software, Inc.
- Iona Technologies, Inc.
- Lucent Technologies Inc.
- NeXT Software Inc.
- Northern Telecom Inc.
- Pitney Bowes, Inc.
- Rational Software Corporation
- RELTEC Corporation
- Rogue Wave Software, Inc.
- Security Dynamics Technology
- Siemens Stromberg-Carlson
- Software Spectrum
- Sterling Software, Inc.
- Storage Technology Corporation
- Sun Microsystems, Inc.
- Suttle Apparatus Corporation
- Tellabs, Inc.
- Visio Corporation

3. *Confidential Information.* Any materials generated or provided by a party in response to discovery may be designated as "Confidential Information" by that party if the party believes in good faith that the materials are confidential or proprietary and are entitled to protection from disclosure under any provision of Tennessee or Federal law, or are subject to existing non-disclosure obligations to a Third Party. The parties to this Protective Agreement agree that the designation of materials as "Confidential Information," or the failure to designate materials as "Confidential Information," shall in no way affect the right of the producing party to challenge the release of such materials by the United States in response to a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552, et seq. In particular, the designation of materials as "Confidential Information," or the failure to designate materials as "Confidential Information" shall in no way affect the right of the producing party to assert that such materials are exempt from disclosure under one or more of the exemptions to disclosure contained in the Freedom of Information Act, 5 U.S.C. § 552(b)(1-9)." Any party asserting confidentiality for such material shall so indicate by clearly marking each page, or portion thereof, for which a Confidential Information designation is claimed with a marking such as "Confidential-Subject to Protective Agreement in Docket No. 99-00377 Before the Tennessee Regulatory Authority" or other markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Except with the prior written consent of the party or other person who has designated a document to be stamped as Confidential Information, or as hereinafter provided, no Confidential Information may be disclosed to any person. For purposes of the Protective Agreement, the term "document" means all written, recorded or graphic material, and non-paginated items such as computer tapes, diskettes, and CD ROMs, whether produced or created by a party or another person, whether produced pursuant to the TRA's rules, subpoena, by agreement or otherwise. Interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, affidavits, and briefs that quote, summarize, or contain materials entitled to protection are accorded status as a stamped confidential document, and to the extent feasible, shall be prepared in such a manner that the Confidential Information is bound separately from that not entitled to protection.

4. *Permissible Disclosure of Confidential Information.*

(a) Notwithstanding paragraph 3, Confidential Information provided pursuant to this Protective Agreement may be disclosed without prior consent only to the following persons, only in prosecuting this Proceeding, and only to the extent necessary to assist in prosecuting this Proceeding:

(1) Counsel of record representing a party in this Proceeding, any legal support personnel (e.g., paralegals and clerical employees) employed by such attorneys.

(2) Other employees, officers, or directors of a party, or consultants or experts retained by a party, who are not currently involved in the marketing, procurement, manufacturing, pricing, or development of telecommunications equipment or software, including switch hardware and software, for which price data are disclosed, or equipment and software that may be substituted for such equipment or software, or are not currently involved in network planning and operations staff (including, but not limited to, the purchasing of telecommunications equipment or software). Individuals who become reviewing representatives under this paragraph agree that they will not use the Confidential Information made available in this Proceeding to plan, develop, or market any computerized telecommunications costing models. Nor will individuals who become reviewing representatives under this paragraph use the Confidential Information to engage or consult in the marketing, procurement, manufacturing, pricing, or development of telecommunications equipment or software, including switch hardware and software, for which price data are disclosed, or equipment or software that may be substituted for such equipment or software.

(3) Court reporters, stenographers, or persons operating audio or video recording equipment at hearings or depositions.

(4) Persons noticed for depositions or designated as witnesses, to the extent reasonably necessary in preparing to testify or for the purpose of examination in this Proceeding.

(b) Persons obtaining access to Confidential Information under this Protective Agreement shall not disclose information designated as Confidential Information to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than in prosecuting this Proceeding before the TRA or any hearing officer appointed by the TRA. Each individual who is provided access to Confidential Information pursuant to paragraph 4(a), (1), (2), (5), or (6), must first sign, and have notarized, a statement affirmatively stating that the individual has reviewed this Protective

Agreement and understands and agrees to be bound by the limitations it imposes on the signing party. The form of the notarized statement to be used is attached as Attachment A to this Agreement.

(c) No copies or notes of materials marked as Confidential Information may be made except copies or notes to be used by persons designated in paragraph (a) of this section. Each party shall maintain a log, recording the number of copies made of all Confidential Information, and the persons to whom the copies have been provided. Any note memorializing or recording of Confidential Information shall, immediately upon creation, become subject to all provisions of this Protective Agreement.

(d) Within ninety (90) days of termination of this Proceeding, including all appeals and petitions, all originals and reproductions of any Confidential Information, along with the log recording persons who received copies of such materials, shall be returned to the producing party. In addition, upon such termination, any notes or other work product, derived in whole or in part from the Confidential Information shall be destroyed, and counsel of record for the receiving party shall notify counsel for the party who produced the materials in writing that this has been completed. If materials are destroyed rather than returned to the producing party, a sworn statement to that effect by counsel of record for the receiving party shall be provided to the producing party. A limited exception to the provisions of this Section is recognized for the TRA wherein the Secretary of the TRA shall be allowed to retain, under seal, one copy of all Confidential Information for purposes of preserving the official record of the TRA. Further, all TRA staff notes or work product shall be accumulated and kept under seal with all other confidential information which comprises the official record of the TRA.

(e) Before disclosing a document marked as Confidential Information to any person listed in subparagraph 4(a)(5) or (a)(6) who is a competitor (or an employee or officer of a competitor) of the party, including a Third Party, that so designated the document, the party wishing to make such disclosure shall give at least ten (10) days advance notice in writing to the counsel who designated such information as Confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. If, within the ten day period, a motion is filed objecting to the proposed disclosure, a disclosure is not permissible unless and until the TRA has denied such motion.

(f) The number of reviewing representatives designated by a party to review Confidential Information under paragraphs 4(a) and 4(a)(2) may not exceed twenty (20) individuals (excluding paralegals and clerical employees) unless (i) the party producing the Confidential Information, and any third party whose Confidential Information is being disclosed, consent to additional reviewing representatives, or (ii) the TRA or the hearing officer denies a motion to bar disclosure of the



Confidential Information to additional reviewing representatives. Failure to file such a motion within ten days after receiving written Notice that a reviewing party intends to designate additional reviewing representative(s) shall constitute consent to the designation. The written Notice shall (a) identify the additional reviewing representative(s), (b) identify the Confidential Information that is proposed to be disclosed, and (c) provide the current employment and position of the proposed additional reviewing representative(s). Notwithstanding the foregoing, the parties may designate in writing within ten (10) days from the entry of this Protective Agreement, not more than eleven (11) individuals from its legal support and/or consulting team which shall have access to the Confidential Information. If within five (5) days after the list is supplied to opposing parties, a motion is made objecting to the proposed disclosure, disclosure is not permissible unless and until the TRA or the hearing officer has denied the Motion. For any additional reviewing representatives, the parties must serve notice as specified above.

(g) (1) With respect to the Third-Party Confidential Information of Bellcore, each expert or consultant retained by a party in this Proceeding and authorized to review such information shall review the information at BellSouth Telecommunications, Inc.'s ("BST") offices at 675 West Peachtree Street, N.E., Atlanta, GA in a designated "discovery room" wherein BST will provide non-networked personal computers and printers adequate in number and processing power to permit the information to be concurrently reviewed by more than one expert or consultant for a party or parties. In the alternative, ICG Telecom Group, Inc. has agreed to designate a custodian of four copies of the computer diskettes. This custodian will maintain a log of all persons who have checked out the diskettes or other material. Parties who obtain access to the Third-Party Confidential Information of Bellcore from the ICG Telecom Group, Inc. custodian agree to run the software on non-networked personal computers in order to minimize the risk of inadvertent disclosure. The ICG Telecom Group, Inc. custodian agrees to return or destroy all material that contain Confidential Information at the conclusion of this Proceeding in accordance with the requirements of this Agreement.

(2) The review by a party's expert(s) at BellSouth Telecommunications, Inc. may take place from 8:30 a.m. to 4:30 p.m., on dates agreed by BST and the party during the discovery period in this Proceeding. Any subsequent review of the information shall be by agreement of BST and the party seeking such review or, in the absence of such agreement, as ordered by the presiding officer or the TRA.

(3) Each expert or consultant for the party reviewing the Third-Party Confidential Information may take notes regarding the information. The notes shall be taken in notebooks. Any verbatim copies of menu screens or printouts shall be maintained in notebooks with consecutively numbered pages. The notes and any subsequent work product based on the notes may not be replicated or copied, except as necessary for distribution to other representatives of the party who are authorized to receive Third-Party Confidential Information and have signed the notarized

affidavit set forth in Attachment A hereto, or except in connection with offering such notes or work product into evidence or otherwise into the record pursuant to paragraph 7 below. At the conclusion of this Proceeding, including all appeals and/or petitions therefrom, all such work product and any other Confidential Information obtained hereunder, including any copies or notes, shall be assembled from the persons having same and destroyed, and the receiving party's counsel of record shall notify BST's counsel in writing that this destruction has been completed. A limited exception to the provisions of this Section is recognized for the TRA wherein any work product and any other confidential information obtained hereunder by the TRA or its Staff, including copies of notes which are not otherwise submitted to and included in the official record of the TRA shall be accumulated and kept under seal with the official record of the TRA.

(4) Each expert or consultant for a party reviewing the Third-Party Confidential Information materials may run the Bellcore computerized models to test alternative inputs and assumptions, and may print out the output of those runs on consecutively numbered pages. These print-outs and any work product based on the print-outs may not be copied, except as necessary for distribution to other representatives of the party who are authorized to receive Third-Party Confidential Information and have signed the notarized affidavit set forth in Attachment A hereto, or except in connection with offering such print-outs or work product into evidence or otherwise into the record pursuant to paragraph 7 below. At the conclusion of this Proceeding, including all appeals and/or petitions therefrom, all such work product and any other Confidential Information obtained hereunder, including any copies or notes, pertaining to the Confidential Information shall be assembled from the persons having same and destroyed, and the receiving party's counsel of record shall notify BST's counsel in writing that this destruction has been completed. A limited exception to the provisions of this Section is recognized for the TRA wherein any work product and any other confidential information obtained hereunder by the TRA or its Staff, including copies of notes which are not otherwise submitted to and included in the official record of the TRA shall be accumulated and kept under seal with the official record of the TRA.

5. *Declassification.* A party may apply, to the TRA for a ruling that documents, categories of documents, or deposition transcripts, stamped or designated as confidential, are not entitled to such status and protection. The party or other person that designated the document or testimony as Confidential Information shall be given notice of the application and an opportunity to respond.

6. *Confidential Information Offered in Evidence or Filed in the Record.* Subject to the TRA's rules and applicable state statutes, Confidential Information may be offered into evidence or in the record made by the parties and submitted to the TRA (or to an arbitrator appointed by the TRA) in this Proceeding, and any protective order entered by the TRA or its hearing officer in this Proceeding, provided that the proponent does so in the manner set forth in this Protective Agreement and provides reasonable advance written

notice of the party's intent to do so. Pursuant to this Agreement, any party may move before the TRA (or a presiding officer of the TRA, or an arbitrator appointed by the TRA) for any order that the evidence be received in camera or under other conditions to prevent unnecessary disclosure. The TRA, presiding officer, or arbitrator will then determine whether the proffered evidence should continue to be treated as Confidential Information and, if so, what protection, if any, may be afforded such information at any hearing or other proceeding.

7. *Subpoena by Courts or Other Agencies.* If a court or other administrative agency subpoenas or orders production of Confidential Information which a party has obtained under the terms of this Protective Agreement, such party shall promptly (within two (2) business days) notify the party (or other person who designated the document as confidential) of the pendency of such subpoena or order to allow that party time to object to that production or seek a protective order.

8. *Filing.* Confidential Information need not be filed with the TRA's Executive Secretary except when required in connection with motions under the TRA's rules and regulations or other matters pending before the TRA or an arbitrator appointed by the TRA. If filed, such information shall be filed under seal and shall remain sealed while in the Executive Secretary's office or such other office as the TRA may designate so long as they retain their status as Confidential Information.

9. *Client Consultation.* Nothing in this Protective Agreement shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of Confidential Information provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure or reference to any Confidential Information except under the procedures or paragraph 4 above.

10. *Use.* Persons obtaining access to Confidential Information under this Protective Agreement shall use the information only for preparation of and the conduct of litigation in this Proceeding and any related appeals or review proceedings, and shall not use such information for any other purpose, including business or commercial purposes, or governmental or other administrative or judicial proceedings.

11. *Non-Termination.* The provisions of this Protective Agreement shall not terminate at the conclusion of this Proceeding.

12. *Modification Permitted.* Nothing in this Protective Agreement shall prevent any party from objecting to discovery that it believes to be otherwise improper.

13. *Responsibilities of the Parties.* The parties are responsible for employing reasonable measures to control, consistent with this Protective Agreement, duplication of, access to, and distribution of Confidential Information.

14. *Definition of "this Proceeding"*. For the purposes of this Protective Agreement, the phrase "this Proceeding" shall only include Tennessee Regulatory Authority Docket No. 99-00377 and any appeals thereof.

15. *Damages*. Because the Third-Party Confidential Information represents substantial commercial value to the current and future business of the Third Parties, the parties agree that any material disclosure of the Third Party Confidential Information would result in substantial damages to the commercial operations of the Third Parties. In the event that Third Party Confidential Information is disclosed in violation of this Protective Agreement by any employee, agent, attorney, expert or consultant for a party to this Protective Agreement, then such party agrees that it will serve as a guarantor for the payment of any damages caused by the violation. It is further agreed that if any provision of this agreement shall contravene any statute or constitutional provision or amendment either now in affect or which may, during the term of this agreement be enacted, then that conflicting provision in the agreement shall be deemed null and void with respect to the TRA. The parties agree to submit to the jurisdiction of state or federal courts within the State of Tennessee.

16. *Counterparts*. This Protective Agreement may be executed by one or more parties to this Protective Agreement on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument binding on and inuring to the benefit of each party so executing this Protective Agreement with the same effect as if all such parties had signed the same instrument at the same time and place.

Dated: September 8, 1999